



February 5, 2003

VIA ELECTRONIC FILING

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Presentation in CC Docket No. 01-338; CC Docket No. 96-98;
CC Docket No. 98-147

Dear Chairman Powell:

This ex parte letter is submitted for the record on behalf of the National Federation of Independent Business (NFIB) in response to the Federal Communication Commission's (FCC) Notice of Proposed Rulemaking in the Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (Triennial Review NPRM). It is appropriate for NFIB, the nation's largest small business advocacy organization, to comment on the proposal, since the rule will affect the small-business community.

Congress made it clear through the enactment of the Regulatory Flexibility Act (RFA) that the rulemaking process must consider the impact on small businesses. This resolve was bolstered when the president signed Executive Order 13272 and emphasized his commitment to small businesses. Because of the nature of the FCC's Notice of Proposed Rulemaking, it appears that the FCC will not be adhering to the RFA. The scope of the Triennial Review NPRM goes beyond that of the original NPRM. As a result, the Initial Regulatory Flexibility Analysis does not adequately consider the impact on small businesses. Absent any definitive proposed rules, we are unable to determine if the potential impact of the forthcoming rule on small-business consumers is being considered sufficiently.

We believe this would have a potential impact and feel strongly that before issuing a final rule, the FCC should make certain that it fully considers the direct and indirect impacts of its rulemaking on small-business consumers. We urge the FCC to review all data to ensure that any action taken does not hinder the availability of competition for small businesses needing local telephone services. As price takers, small-business owners do not have the luxury of negotiating rates like many larger firms. Instead, small-business owners must rely upon competition in the market place to hold down prices.

The FCC's rulemaking has the potential to limit the benefit of the Telecommunications Act of 1996 by reducing the number of competitors willing to serve small-business users. Since the 1996 Act, the Unbundled Network Element Platform (UNE-P) has been critical to the development of competition for small business customers and now serves 7.6% of the small business market. In addition, UNE-P market share is often highest in rural states where competition for the small business market might otherwise be scarce. Further, a study recently released by Economics and Technology, Inc. reveals small businesses could save between \$2.2 billion and \$6 billion a year in lower telephone bills if competitive providers maintain full access to UNE-P.

NFIB supports competition and free markets that act to lower prices for small-business owners. Small-business owners are the backbone of the nation's economy. They employ the majority of the workforce and create the most new jobs. We hope the FCC will work to protect small-business consumer welfare by encouraging competition. On behalf of 600,000 small-business owners, NFIB urges the FCC to conduct a thorough review of all available data to consider how this rulemaking will affect small business users. Thank you for keeping small businesses in mind during your consideration of the Triennial Review NPRM.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Danner', with a long, sweeping horizontal line extending to the right.

Dan Danner
Senior Vice President
Public Policy

cc: Commissioner Martin
Commissioner Abernathy
Commissioner Copps
Commissioner Adelstein